

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
and	)	CC Docket 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee,	)	
	)	
For Consent to a Transfer of Control	)	

**RECEIVED**

**NOV 23 1998**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**COMMENTS OF PAETEC COMMUNICATIONS, INC.**

PaeTec Communications, Inc. ("PaeTec"), by counsel, hereby submits its Comments in opposition to GTE Corporation's ("GTE") proposed transfer of control to Bell Atlantic Corporation ("Bell Atlantic"). PaeTec opposes the transfer of control on the grounds that it will have an adverse effect on local competition. Permitting these two dominant local exchange telephone companies to merge will serve only to further delay implementation of the market-opening provisions of the Telecommunications Act of 1996 ("1996 Act").<sup>1</sup> If the Commission decides to grant the Petition, however, it should impose specific pre-merger pro-competitive conditions upon the merged entity. Although such conditions will not make the proposed merger desirable, they will at least limit the damage that would otherwise be done to the competitive marketplace.

PaeTec is a Delaware corporation with headquarters in Fairport, New York. It is authorized to provide competitive local exchange service in eight states and long distance service in twenty-three states. PaeTec has requested interconnection agreements with Bell Atlantic and GTE, pursuant to 47 U.S.C. 252(i), in numerous states. PaeTec, therefore, would be directly affected by a transfer of control.

---

<sup>1</sup> Public Law 104-104, codified at 47 U.S.C. § 151 et seq.

No. of Copies rec'd 019  
List ABCDE

Permitting Bell Atlantic to merge with GTE is at odds with the intended result of the 1996 Act. It has been PaeTec's experience that Bell Atlantic intends to thwart the 1996 Act and deny the statutory rights of its competitors with regard to Section 252(i) of the 1996 Act. Bell Atlantic has been unwilling to honor its Section 252(i) obligations to PaeTec. The flouting of its Section 252(i) obligations is plainly relevant to the transfer of control from GTE to Bell Atlantic. Bell Atlantic's ability to act in an anti-competitive manner can only be exacerbated by the proposed transfer of control.

**I. BELL ATLANTIC HAS ABUSED ITS MARKET POWER TO DENY PAETEC OF ITS RIGHTS UNDER THE 1996 ACT**

Bell Atlantic's refusal to honor its obligations under Section 252(i) of the 1996 Act is anti-competitive. Section 252(i) provides that:

A local exchange carrier **shall** make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier **upon the same terms and conditions as those provided in the agreement.**

47 U.S.C. § 252(i) (emphasis added). Adopting an interconnection agreement pursuant to Section 252(i) should be a wholly administrative task; no negotiation should be necessary. Bell Atlantic, however, has turned the exercise of Section 252(i) rights by CLECs into a protracted process riddled with unnecessary negotiations, interminable administrative delays, and significant expense.

Bell Atlantic's Section 252(i) procedure is unacceptable. After receiving a formal request to adopt a specific agreement, Bell Atlantic returns a draft adoption agreement to the requesting CLEC. Bell Atlantic regularly includes terms in its draft adoption document that substantively modify terms of the agreement the CLEC seeks to adopt. Although this is contrary to the plain language of Section 252(i), CLECs such as PaeTec are forced to capitulate to Bell Atlantic's demands in order to adopt an interconnection agreement pursuant to Section 252(i). If Bell Atlantic is willing to flout its obligations under the 1996 Act at the same time that it seeks approval of this transfer of control, one can only

imagine what sort of violations the merged entity will be willing to commit if the transfer of control is permitted.

PaeTec has unfortunately been subjected to Bell Atlantic's anti-competitive tactics in its efforts to adopt agreements pursuant to Section 252(i). PaeTec served an interconnection demand under Section 252 of the 1996 Act on Bell Atlantic on June 19, 1998, requesting interconnection agreements for Massachusetts, New Jersey, New York, Pennsylvania, Maryland, and Virginia. On September 3, 1998, PaeTec also served interconnection demands on Bell Atlantic for New Hampshire and Rhode Island. Finally, PaeTec served a demand for the District of Columbia on November 3, 1998. Subsequently, PaeTec apprised Bell Atlantic of its election to adopt various interconnection agreements in these states, as is its right under Section 252(i) of the 1996 Act.<sup>2</sup>

In the five months since Bell Atlantic began receiving these requests from PaeTec, Bell Atlantic has done everything in its power to deny PaeTec its Section 252(i) rights under the 1996 Act. Bell Atlantic has failed to negotiate in good faith and improperly prevented PaeTec from exercising its Section 252(i) rights. Bell Atlantic has done this by engaging in foot dragging of the worst sort, and proposing conditions upon PaeTec's exercise of its Section 252(i) rights that are not authorized by the 1996 Act. Bell Atlantic's actions have posed a substantial barrier to entry for PaeTec because PaeTec has been forced to expend a considerable amount of its limited funding on obtaining Section 252(i) agreements. The reason PaeTec decided to adopt agreements pursuant to Section 252(i) rather than negotiate pursuant to Section 252(a)(1) – and the purpose of Section 252(i) itself – was to obtain interconnection agreements inexpensively. Bell Atlantic's policies have thwarted this effort.

---

<sup>2</sup> PaeTec notified Bell Atlantic of its election for each state by letter on the following dates: August 11, 1998 (Massachusetts); August 12, 1998 (New York); September 8, 1998 (New Jersey); September 15, 1998 (Pennsylvania); September 29, 1998 (New Hampshire); October 7, 1998 (Rhode Island); November 4, 1998 (Maryland); November 16, 1998 (Virginia); and November 17, 1998 (District of Columbia).

Bell Atlantic has, at every opportunity, denied PaeTec of its Section 252(i) rights. (See letters of Eric J. Branfman, attached as Exhibit A) After negotiation with Bell Atlantic over the course of several months regarding Bell Atlantic's attempts to make substantive modifications of the agreements that PaeTec requested to adopt, PaeTec and Bell Atlantic finally arrived at agreements by which PaeTec could adopt agreements in Massachusetts and Pennsylvania. It was PaeTec's understanding that the Massachusetts and Pennsylvania agreements were acceptable to Bell Atlantic because they were drafted by Bell Atlantic and delivered to PaeTec for execution. In fact, Bell Atlantic directed PaeTec by letter to sign the "**final** Interconnection Agreements." (Emphasis in original). Bell Atlantic's letter also promised that "the contract will then be forwarded to Jeffrey A. Masoner for signature" and that "[o]nce fully executed we [Bell Atlantic] will send back one executed set of signature pages to your attention." PaeTec signed the Massachusetts and Pennsylvania agreements and then returned them to Bell Atlantic on October 29, 1998. Bell Atlantic now refuses to sign the very agreements that it drafted and provided to PaeTec. By doing so, Bell Atlantic has violated its statutory duty to negotiate with PaeTec in good faith as required by Section 251(c)(1) of the 1996 Act. Bell Atlantic's refusal to sign the Massachusetts and Pennsylvania agreements also violates its obligations under Section 252(i).

Bell Atlantic also failed to provided PaeTec with final 252(i) agreements for execution for New York and New Jersey, despite the parties having agreed upon the terms of the agreements during the week of October 26, 1998. Instead, on November 10, 1998, Chris Antoniou, a Bell Atlantic attorney, advised counsel for PaeTec for the first time that Bell Atlantic is unwilling to sign the 252(i) adoption agreements that it had already prepared or that the parties had agreed upon (and even those PaeTec already signed) because Bell Atlantic anticipates that the Commission may possibly at some time in the future issue an order that would deprive those CLECs that do not yet have interconnection agreements of some of the benefits with respect to reciprocal compensation for Internet service

provider traffic that are enjoyed by CLECs that already have agreements. In addition, Mr. Antoniou advised that Bell Atlantic was revising its 252(i) agreements to reflect Bell Atlantic's position.

Despite the fact that PaeTec and Bell Atlantic already agreed upon the terms of draft 252(i) agreements, on November 13, 1998 Bell Atlantic delivered to PaeTec's counsel entirely new 252(i) agreements for New York, Massachusetts, Pennsylvania, and New Jersey (and subsequently on November 17, 1998 for Maryland, New Hampshire, and Rhode Island). These revised draft agreements contain "clarifications" of the terms of the underlying agreements that PaeTec requested to adopt pursuant to Section 252(i). Bell Atlantic's "clarifications" have the explicit effect of entirely deleting and replacing terms of the underlying agreements with provisions that would specifically exclude reciprocal compensation for ISP traffic. This language is in conflict with orders of the New York, Massachusetts, Pennsylvania, and Maryland commissions that find such traffic to be local in nature. The revised draft agreements were accompanied by a letter which grossly and willfully misrepresented the FCC's October 30, 1998 Order, as follows:

In an Order released on October 30, 1998 in CC Docket 98-79, the FCC ruled that traffic that originates on a carrier's network and then terminates over the Internet via the facilities of an Internet Service Provider ("ISP") comprises a single call that is jurisdictionally interstate, and not local. In light of this development, Bell Atlantic is not in a position to execute any interconnection agreement that does not explicitly state both that Internet traffic is not local, and that Bell Atlantic has revised our proposed agreement to reflect this position.

(Letter from Stacy Walsh Pin to Eric J. Branfman, dated November 12, 1998, attached as Exhibit B).

Bell Atlantic's position is unsupported by the FCC's October 30th Order.

As counsel for PaeTec informed Mr. Antoniou on the telephone on November 10, 1998, Bell Atlantic has no right under the 1996 Act to stall in this manner. Moreover, Bell Atlantic's modification of substantive terms of the underlying agreements is in direct contravention of its obligations under the 1996 Act. PaeTec's right to adopt agreements pursuant to Section 252(i) is absolute. If a subsequent order from the Commission, state commissions, or a court modifies this

right, so be it, but Bell Atlantic may not deny or condition PaeTec's right to have the same agreement as is presently enjoyed by another CLEC. Section 252(i) does not entitle an ILEC to force a requesting CLEC to accept modifications of the agreement it seeks to adopt. Rather, as one state commission stated, "the plain meaning of this statutory provision of the Act [Section 252(i)] is that any requesting carrier is entitled to interconnection with a LEC under the same terms and conditions of any other interconnection agreement to which that LEC is a party." *Joint Application of Bell Atlantic-Delaware, Inc. and Focal Communications Corporation of Pennsylvania*, Findings and Recommendations, Docket No. 98-275, at 9-10 (Del. P.S.C. Sept. 10, 1998).<sup>3</sup> As such, Bell Atlantic's practice of forcing CLECs to accept modification of or additional terms to the agreements they are adopting is unlawful.

As described herein, PaeTec has made considerable effort at great expense to resolve this situation. Although Bell Atlantic and PaeTec were ultimately able to agree on terms to resolve this dispute today,<sup>4</sup> PaeTec was forced by Bell Atlantic's actions to prepare arbitration petitions<sup>5</sup> that address the Section 252(i) issue for six states at great expense. As a direct result of Bell Atlantic's actions, PaeTec has incurred significant expense and was forced to accept Section 252(i) agreements that are not the same as the underlying agreements PaeTec sought to adopt.<sup>6</sup>

---

<sup>3</sup> See also *QST Communications, Inc. v. Ameritech Illinois*, Order, File No. 98-0603 (Ill.C.C. Nov. 5, 1998) (holding that Section 252(i) entitled CLEC to adopt approved agreement "in its entirety" and ILEC's refusal to allow CLEC to do so was violation of Section 252(i)).

<sup>4</sup> Bell Atlantic finally forwarded executed 252(i) agreements for Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Rhode Island to PaeTec at 12:30 p.m. today. Bell Atlantic has committed to provide executed agreements in Virginia and the District of Columbia soon.

<sup>5</sup> The arbitration window closes on November 25, 1998 for the Massachusetts, New Jersey, New York, Pennsylvania, Maryland, and Virginia requests. See 47 U.S.C. § 252(b)(1).

<sup>6</sup> All of the agreements include a "clarification" regarding reciprocal compensation that state:

BA has entered into this Agreement in accordance with the requirements of 47 USC

PaeTec is not the only CLEC against which Bell Atlantic has used the adoption process to attempt to exact concessions regarding reciprocal compensation. For example, in September 1998, Choice One Communications Inc., a New York CLEC, asked to adopt one of Bell Atlantic's New York interconnection agreements. Bell Atlantic returned an adoption agreement with a term that would have denied Choice One reciprocal compensation for terminating traffic to Internet Service Providers, contrary both to the language of the primary interconnection agreement and to the March 19, 1998 Order of New York Public Service Commission. Bell Atlantic later relented, but only after Choice One had to incur the expense of bringing the matter to the New York Commission's attention.<sup>7</sup> Again, the CLEC lost time and resources disputing a matter already decided by the New York Commission and asserting its 252(i) rights.

---

§ 252(i), but has advised PaeTec that BA disputes the applicability of the Separate Agreement's Reciprocal Compensation arrangements to Internet traffic (herein the "Disputed Issue"). PaeTec believes that the Separate Agreement's Reciprocal Compensation arrangements apply to Internet traffic, but acknowledges that PaeTec and BA disagree as to the meaning of the Separate Agreement with respect to the Disputed Issue, and that BA's execution of this Agreement does not constitute a voluntary adoption or reaffirmation of the Separate Agreement, an admission that any provision of the Separate Agreement (or PaeTec's interpretation thereof) is lawful or reasonable, or a release or waiver of BA's claims and defenses pertaining to the Disputed Issue. The entry into, filing and performance of the Parties of this Agreement does not in any way constitute a waiver by either Party of any of the rights and remedies it may have to seek review of any of the provisions of this Agreement or the Separate Agreement, or to petition the Department, or other administrative body or court for reconsideration or reversal of any determination made by any of them, or to seek enforcement or review in any way of any portion of this Agreement or the Separate Agreement in connection with the Disputed Issue or PaeTec's election under 47 USC § 252(i).

Although we do not believe this additional language undermines the reciprocal compensation provisions in the underlying agreements, it needlessly interjects uncertainty into the Section 252(i) process.

<sup>7</sup> See Letter from E. Branfman, counsel for Choice One Communications, Inc., to D. Renner, Acting Secretary, New York P.S.C, in Case No. 97-C-0271, dated September 28, 1998. (Attached as Exhibit C).

Bell Atlantic's policy of denying CLEC's of their Section 252(i) rights denies competitors the opportunity to enter the local exchange markets and compete as envisioned by the 1996 Act. CLECs must expend significant resources and waste time negotiating with Bell Atlantic to adopt an existing agreement pursuant to Section 252(i). In particular, the consequences on PaeTec of Bell Atlantic's stalling tactics to gain a competitive advantage are severe. PaeTec is subject to conditions in its credit facility under which it is obliged to be "up and running" by dates certain, with substantial financial penalties for PaeTec's failure to comply with the schedule. While Bell Atlantic stalled in providing PaeTec with the interconnection agreements to which PaeTec is entitled, PaeTec was unable to take the preparatory steps to establish interconnection trunks and the other facilities with Bell Atlantic that will enable PaeTec to meet the commitments in its credit facility.

**II. IF THE TRANSFER OF CONTROL IS APPROVED, IT SHOULD BE SUBJECT TO STRINGENT PRE-MERGER MARKET-OPENING CONDITIONS.**

If, notwithstanding the foregoing, the Commission approves the transfer of control, the Commission should require pre-merger conditions to ensure that the merged company will truly open its markets to competitors. Of course, these conditions should be in addition to the conditions already imposed by the Commission upon Bell Atlantic in the Bell Atlantic/NYNEX merger. Any failure to comply with the conditions should result in swift and substantial sanctions. Specifically, the Commission should address the following concerns in structuring conditions for merger approval:

1. **Combinations of UNEs:** The Commission should require the new Bell Atlantic-GTE to provide technically feasible combinations of network elements at forward-looking cost-based rates. The refusal to provide network element combinations – or alternatively, the placement of limitations on the use of UNE combinations – has no basis in technology or in economics, and is merely a legal hurdle used to inhibit competitive entry.



2.     **Winback Programs:** The Commission should issue a clear directive regarding the use of "winback" programs by the merged entity and the sharing of information between its retail and wholesale operations. To stop this anti-competitive backdoor sharing of information, the Commission should rule that it is a *prima facie* evidence of a violation of Section 251 of the 1996 Act when the merged entity wins back a customer prior to switching over to the competitor's retail service. Moreover, the Commission should establish a window of time — perhaps 60 days — during which the merged entity would be prohibited from contacting any customer that has switched to a competitor's service to ensure that the merged entity's incentives to engage in such conduct are minimized.

3.     **Collocation Arrangements:** The Commission should direct the new Bell Atlantic-GTE to provide more flexible collocation arrangements if the merger is approved. For example, the Commission should require the super ILEC to: (i) offer carriers access to less than 100 square feet of collocation space; (ii) allow carriers to use "cageless collocation;" and (iii) allow carriers to collocate equipment that is necessary for interconnection and the use of unbundled network elements, even if that equipment could also be used for other purposes.

4.     **Availability of Arbitrated Rates:** GTE is declining to make available to other carriers in several other states UNE prices and resold discounts that are the product of its arbitrations with AT&T. GTE refuses to allow other CLECs to purchase UNEs and resold services from GTE at the AT&T arbitrated rates in states where AT&T and GTE have not executed final interconnection agreements. In essence, GTE requires each CLEC to relitigate the same cost studies to obtain these rates. This is a barrier to entry that GTE has erected out of legal fiction. Requiring GTE to make its arbitrated rates available to all competitors will dramatically reduce the legal costs associated with competitive entry and eliminate the administrative burden of repetitive arbitration proceedings.

5.     **Special Construction Charges:** The Commission should require the new Bell Atlantic-GTE to refrain from charging special construction charges to CLECs – or to the CLECs' end

users – when such charges would not be charged to the super ILEC's own end user customers. Moreover, to the extent that such charges are imposed upon CLECs or their end users, the super ILEC should be required to provide justification for imposing these charges and forward-looking TELRIC analyses supporting their imposition if challenged.

### CONCLUSION

For the foregoing reasons, the transfer of control should be disapproved. If it is approved, approval should be subject to stringent market opening conditions.

By: 

Eric J. Brantman  
Eric N. Einhorn  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500

Counsel for PaeTec Communications, Inc.

Date: November 23, 1998

## **EXHIBIT A**

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500

FACSIMILE (202) 424-7645

WWW.SWIDLAW.COM

November 9, 1998

ERIC J. BRANFMAN  
DIRECT DIAL (202) 424-7553  
EJBRANFMAN@SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

## VIA FACSIMILE AND FEDERAL EXPRESS

Ms. Jennifer Van Scoter  
Director, Negotiations and Policy  
Telecom Industry Services  
Bell Atlantic Network Services  
1095 Avenue of the Americas  
Room 1423  
New York, NY 10036

Re: PaeTec Requests to Enter Into Agreements Under Section 252(i)

Dear Ms. Van Scoter:

On June 19, 1998, Bell Atlantic received PaeTec Communications, Inc.'s ("PaeTec") letter requesting the negotiation of interconnection agreements for -- among other states -- Massachusetts, New Jersey, New York, and Pennsylvania. PaeTec subsequently informed Bell Atlantic of its intention to "opt into" particular agreements for these states pursuant to 47 U.S.C. § 252(i). The parties then agreed upon language for 252(i) agreements for each of these states. Bell Atlantic, however, is now improperly delaying the final steps of the 252(i) process as described below.

PaeTec returned executed copies of the Pennsylvania and Massachusetts agreements to Bell Atlantic by overnight mail on October 29, 1998. Despite repeated telephone inquiries by counsel for PaeTec as to whether Bell Atlantic has executed the Massachusetts and Pennsylvania agreements, Bell Atlantic has neither returned fully executed agreements to PaeTec nor indicated to PaeTec that the agreements have been executed.

Further, Bell Atlantic has not provided PaeTec with 252(i) agreements for New Jersey and New York, despite the parties having agreed upon the terms of the agreements during the week of October 26, 1998. PaeTec desires to execute these agreements as soon as possible.

PaeTec expects that, by November 12, 1998, Bell Atlantic shall: (1) execute and return the Massachusetts and Pennsylvania agreements to PaeTec; and (2) deliver the New Jersey and New York agreements with the agreed upon language for execution by PaeTec. If Bell Atlantic does not complete these tasks by November 12, 1998, PaeTec will file arbitration petitions with the relevant state commissions to rectify these delays. We appreciate your prompt attention to this matter and look forward to receiving these agreements.

Sincerely,



Eric J. Branfman  
Counsel for PaeTec Communications, Inc.

cc: J. T. Ambrosi (by facsimile)  
Jeffrey Masoner (by facsimile)  
Chris Antoniou (by facsimile)  
Stacy Walsh Pin (by facsimile)  
Eric N. Einhorn

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

ERIC J. BRANFMAN  
ATTORNEY-AT-LAW  
DIRECT DIAL (202) 424-7553  
EJBRANFMAN@SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

November 11, 1998

## **VIA FAX AND FEDERAL EXPRESS**

Ivan Seidenberg  
President and Chief Executive Officer  
Bell Atlantic  
1095 Avenue of the Americas - 41st Floor  
New York, New York 10026

Jack Goldberg  
President - Telecom Industry Services  
Bell Atlantic  
1095 Avenue of the Americas, Room 4043  
New York, New York 10026

Re: **Interconnection Negotiations with PaeTec Communications, Inc.**

Dear Gentlemen:

My client, PaeTec Communications, Inc. ("PaeTec"), served an interconnection demand under Section 252 of the Telecommunications Act of 1996 ("Act") on Bell Atlantic on June 19, 1998, requesting interconnection agreements for New York, Massachusetts, New Jersey, Pennsylvania, and Maryland. On September 3, 1998, PaeTec also served interconnection demands on Bell Atlantic for New Hampshire and Rhode Island. Subsequently, PaeTec apprised Bell Atlantic of its election to adopt various existing interconnection agreements in these states, as is its right under Section 252(i) of the Act, which provides as follows:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

PaeTec notified Bell Atlantic of its election for each state by letter on the following dates: August 11, 1998 (Massachusetts); August 12, 1998 (New York); September 8, 1998 (New Jersey); September 15, 1998 (Pennsylvania); September 29, 1998 (New Hampshire); October 7, 1998 (Rhode Island); and November 4, 1998 (Maryland).

In the more than three months since Bell Atlantic began receiving these requests, Bell Atlantic has done everything in its power to deny PaeTec its 252(i) rights under the Act. Bell Atlantic has engaged in foot dragging of the worst sort, and has proposed conditions upon PaeTec's exercise of its 252(i) rights that are not authorized by the Act. Despite that, PaeTec and Bell Atlantic finally arrived at acceptable agreements by which PaeTec could adopt existing agreements. I know that the

Ivan Seidenberg  
Jack Goldberg  
November 11, 1998  
Page 2

Massachusetts and Pennsylvania agreements were acceptable to Bell Atlantic because Bell Atlantic prepared them, and I know that they were acceptable to PaeTec because PaeTec signed them and then returned them to Bell Atlantic on October 29, 1998 for filing with the Massachusetts and Pennsylvania commissions. Bell Atlantic now refuses to sign and file the agreements. By doing so, Bell Atlantic has violated its statutory duty to negotiate with PaeTec in good faith as required by Section 251(c)(1) of the Act.

Bell Atlantic has also failed to negotiate in good faith and improperly prevented PaeTec from exercising its 252(i) rights for the other states mentioned above. For example, Bell Atlantic has not provided PaeTec with final 252(i) agreements for execution for New Jersey and New York, despite the parties having agreed upon the terms of the agreements during the week of October 26, 1998. Moreover, Bell Atlantic has not responded to PaeTec's notification of its election to adopt approved agreements in Maryland, New Hampshire, and Rhode Island, despite repeated telephone calls requesting that Bell Atlantic respond.

The most serious threat to PaeTec's rights under Section 252(i) of the Act comes from Bell Atlantic's assertion, which Chris Antoniou of Bell Atlantic made to me yesterday on the telephone. Mr. Antoniou advised that because Bell Atlantic anticipates that the FCC may possibly, at some time in the future, issue an order that would deprive CLECs that did not yet have interconnection agreements of some of the benefits with respect to reciprocal compensation for Internet service provider traffic that are enjoyed by CLECs already having agreements, Bell Atlantic would be unwilling to sign the 252(i) adoption agreements that it has prepared and PaeTec has signed. In addition, Mr. Antoniou advised that Bell Atlantic was revising its 252(i) agreements to reflect Bell Atlantic's position. Mr. Antoniou informed me that a letter outlining Bell Atlantic's position will be forthcoming, but not until tomorrow.

As I told Mr. Antoniou on the telephone, it is PaeTec's position that Bell Atlantic has no right under the Act to stall in this manner. PaeTec's 252(i) rights to adopt an existing agreement are absolute.<sup>1</sup> If a subsequent order from the FCC or a court modifies those rights, so be it, but Bell Atlantic has no right to deny or condition PaeTec's right to have the same agreement as is presently enjoyed by another CLEC.

The financial consequences on PaeTec of Bell Atlantic's stalling tactics to gain a competitive advantage are severe. PaeTec is subject to conditions in its credit facility under which it is obliged to be "up and running" by dates certain, with substantial financial penalties for PaeTec's failure to comply

---

<sup>1</sup> As one hearing examiner stated when recommending that Bell Atlantic be required to provide the identical terms and conditions of an approved agreement to a CLEC pursuant to Section 252(i), "the plain meaning of this statutory provision [Section 252(i)] of the Act is that any requesting carrier is entitled to interconnection with a LEC under the same terms and conditions of any other interconnection agreement to which that LEC is a party." Joint Application of Bell Atlantic-Delaware, Inc. and Focal Communications Corporation of Pennsylvania, Findings and Recommendations, Docket No. 98-275, at 9-10 (Del. PSC Sept. 10, 1998). The Maryland Commission also recently ordered Bell Atlantic to provide a CLEC with the identical terms and conditions of an approved interconnection agreement pursuant to 252(i). Letter of Donald P. Eveleth to Russell M. Blau and David K. Hall, September 4, 1998.

Ivan Seidenberg  
Jack Goldberg  
November 11, 1998  
Page 3

with schedule. While Bell Atlantic stalls in providing PaeTec with the interconnection agreements to which PaeTec is entitled, PaeTec is unable to take the preparatory steps to establish interconnection trunks and the other facilities with Bell Atlantic that will enable PaeTec to meet the commitments in its credit facility.

**This is to notify Bell Atlantic that should Bell Atlantic's refusal to allow PaeTec to timely exercise its 252(i) rights cause PaeTec to suffer financial penalties in its credit facility. PaeTec will seek to hold Bell Atlantic accountable for compensatory and punitive damages, given the willfulness of Bell Atlantic's conduct.**

In addition, Bell Atlantic's flouting of its Section 252(i) obligations is plainly inconsistent with the assertions in its Section 271 cases that it is facilitating competition. PaeTec intends to bring Bell Atlantic's conduct to the attention of the appropriate state and federal regulatory agencies in connection with Bell Atlantic's Section 271 applications.

Finally, Bell Atlantic's flouting of its Section 252(i) obligations is plainly relevant to its efforts to merge with GTE. Bell Atlantic's ability to act in an anti-competitive manner can only be exacerbated by the proposed merger. As I told Mr. Antoniou yesterday on the phone, PaeTec intends to bring Bell Atlantic's conduct to the attention of the appropriate state and federal regulatory agencies in connection with the merger. As I noted yesterday, the New York PSC filing deadline is November 20, 1998, while the FCC filing deadline is November 23, 1998. We are already preparing comments for PaeTec to file with both commissions.

Until this point, Bell Atlantic's actions with respect to PaeTec have been governed by its single-minded devotion to gaining a competitive advantage with respect to reciprocal compensation. That short-sighted strategy has as its immediate victim PaeTec, which simply wants the same agreement as other CLECs, and wants to get into business. But if Bell Atlantic continues on this course, it may well be Bell Atlantic that is the victim of its own ill-conceived strategy, as its anti-competitive tactics may lead to adverse consequences on issues of far greater long range importance to Bell Atlantic. I sincerely hope that Bell Atlantic will reconsider its tactics, with its own long-range goals in mind, and sign the previously negotiated interconnection agreements with PaeTec and file them immediately with the appropriate state commissions.

Sincerely,



Eric J. Branfman  
Counsel For PaeTec Communications, Inc.

cc: Attached List of Regulatory Commissioners (as specified)  
Richard E. Ottalagana (by regular mail and facsimile)  
J.T. Ambrosi (by regular mail and facsimile)  
Jeffrey Masoner (by Federal Express and facsimile)  
Chris Antoniou (by Federal Express and facsimile)

## **LIST OF REGULATORY COMMISSIONERS**

### **Federal Communications Commission (Federal Express):**

Chairman William E. Kennard  
Commissioner Susan Ness  
Commissioner Harold Furchtgott-Roth  
Commissioner Michael K. Powell  
Commissioner Gloria Tristani

### **Maryland Public Service Commission (Federal Express):**

Chairman Glenn F. Ivey  
Commissioner E. Mason Hendrickson  
Commissioner Gerald L. Thorpe  
Commissioner Susanne Brogan  
Commissioner Claud M. Ligon

### **Massachusetts Department of Telecommunications and Energy (Federal Express):**

Chairman Janet Gail Besser  
Commissioner James Connelly  
Commissioner Paul Vasington  
Commissioner Eugene Sullivan  
Commissioner W. Robert Keating

### **New Hampshire Public Utilities Commission (Federal Express):**

Chairman Douglas L. Patch  
Commissioner Bruce B. Ellsworth  
Commissioner Susan S. Geiger

### **New Jersey Board of Public Utilities (Federal Express):**

Herbert H. Tate, President  
Commissioner Carmen J. Armenti



**New York State Public Service Commission (Federal Express):**

Chairman Maureen O. Helmer  
Deputy Chairman John B. Daly  
Commissioner Thomas J. Dunleavy  
Commissioner James D. Bennett

**Pennsylvania Public Utilities Commission (Federal Express):**

Chairman John M. Quain  
Commissioner David Rolka  
Commissioner Nora Mead Brownell  
Commissioner Aaron Wilson, Jr.

**Rhode Island Public Utilities Commission (Federal Express):**

Chairman James J. Malachowski  
Commissioner Kate F. Racine

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

ERIC J. BRANFMAN  
ATTORNEY-AT-LAW  
DIRECT DIAL (202) 424-7553  
EJBRANFMAN@SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

November 13, 1998

## VIA FAX AND FEDERAL EXPRESS

To Commissioners: Federal Communications Commission  
Maryland Public Service Commission  
Massachusetts Department of Telecommunications and Energy  
New Hampshire Public Utilities Commission  
New Jersey Board of Public Utilities  
New York Public Service Commission  
Pennsylvania Public Utility Commission  
Rhode Island Public Utilities Commission

Re: Bell Atlantic Refusal to Allow PaeTec Communications, Inc. to Adopt Approved Agreements Pursuant to 47 U.S.C. § 252(i)

Dear Chairmen and Commissioners:

On November 11, 1998, I copied you on a letter that I sent, on behalf of PaeTec Communications, Inc. ("PaeTec"), to Ivan Seidenberg and Jack Goldberg of Bell Atlantic. The letter protested Bell Atlantic's refusal to permit PaeTec's exercise of its rights pursuant to 47 U.S.C. § 252(i) by foot dragging and imposing conditions on PaeTec that are not authorized by the Act. Despite having initiated its negotiations with Bell Atlantic for 252(i) agreements several months ago, today PaeTec received completely new draft agreements from Bell Atlantic seeking to explicitly exclude -- in the form of a "clarification" -- reciprocal compensation for ISP traffic. (See attached Bell Atlantic Letter and Draft 252(i) Agreement, Section 2.0).

Bell Atlantic's imposition of this "clarification" in its newest proposal is yet another example of foot dragging and a blatant repudiation of its Section 252(i) responsibility to "... make available any interconnection, service, or network element provided under an agreement approved under [Section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." Moreover, as the attached letter from Bell Atlantic illustrates, Bell Atlantic has affirmatively and willfully misrepresented the FCC's Order released on October 30, 1998 (CC Docket 98-78). Finally, Bell Atlantic's position contradicts the statement of FCC Chairman William Kennard on the last day of the recent National Association of Regulatory Utility Commissioners meeting that the twenty-three states that have ordered ILECs to pay reciprocal compensation on ISP-terminated calls "were right to decide the issue when it was presented to them and

Chairmen and Commissioners  
November 13, 1998  
Page 2

I do not believe it is the role of the FCC to interfere with those state decisions in any way." (TELECOM A.M., Vol. 4, No. 218, Nov. 13, 1998 (Warren Publishing Inc.)).

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Branfman".

Eric J. Branfman  
Counsel For PaeTec Communications, Inc.

cc: Richard E. Ottalagana (by regular mail and facsimile)  
J.T. Ambrosi (by regular mail and facsimile)  
Ivan Seidenberg (by Federal Express and facsimile)  
Jack Goldberg (by Federal Express and facsimile)  
Jeffrey Masoner (by Federal Express and facsimile)  
Chris Antoniou (by Federal Express and facsimile)

Bell Atlantic Network Services, Inc.  
Telecom Industry Services  
Two Bell Atlantic Plaza  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201  
Voice: 703 974-4611  
Fax: 703 974-0744

Stacy Walsh Pin  
Contracts Manager

November 12, 1998

**VIA MESSENGER**

Mr. Eric Branfman, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Ste. 300  
Washington, D.C. 20007

**RE: Interconnection Agreement between Bell Atlantic -  
New York and PacTec Communications, Inc.**

Dear Mr. Branfman:

In an Order released on October 30, 1998 in CC Docket 98-79, the FCC ruled that traffic that originates on a carrier's network and then terminates over the Internet via the facilities of an Internet Service Provider ("ISP") comprises a single call that is jurisdictionally interstate, and not local. In light of this development, Bell Atlantic is not in a position to execute any interconnection agreement that does not explicitly state both that Internet traffic is not local, and that Bell Atlantic is not obligated to pay reciprocal compensation on such traffic. Accordingly, Bell Atlantic has revised our proposed agreement to reflect this position.

Please sign the flagged signature pages and return one complete contract and both signature pages to my attention at the above address. The documents will then be forwarded to Jeffrey A. Masoner for his signature and we will send back one executed set of signature pages to your attention.

If you have any questions please contact me on (703) 974-4611.

Sincerely,



Stacy Walsh Pin

c: C. Antoniou, Esq.

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE  
TELECOMMUNICATIONS ACT OF 1996**

**Dated as of November 20, 1998**

**by and between**

**NEW YORK TELEPHONE COMPANY,**

**d/b/a**

**BELL ATLANTIC - NEW YORK**

**and**

**PAETEC COMMUNICATIONS, INC.**

## **INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996**

This Interconnection Agreement (this "Agreement"), under Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), is effective as of the 20th day of November, 1998 (the "Effective Date"), by and between New York Telephone Company, d/b/a Bell Atlantic - New York ("BA"), a New York corporation with offices at 1095 Avenue of the Americas, Room 1423, New York, New York 10036, and PaeTec Communications, Inc. ("PaeTec"), a Delaware corporation with offices at 290 Woodcliff Drive, Fairport, New York, New York 14450 (each a "Party" and, collectively, the "Parties").

WHEREAS, PaeTec has requested that BA make available to PaeTec Interconnection, service and unbundled Network Elements upon the same terms and conditions as provided in the Interconnection Agreement (and amendments thereto) between ACC National Telecom Corp. and BA, dated as of November 11, 1997, for the State of New York, approved by the Commission under Section 252 of the Act (the "Separate Agreement") and attached as Appendix 1 hereto; and

WHEREAS, BA has undertaken to make such terms and conditions available to PaeTec hereby only because and, to the extent required by, Section 252(i) of the Act.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PaeTec and BA hereby agree as follows:

### **1.0 Incorporation of Appendices by Reference**

1.1 Except as expressly stated herein, the terms and conditions of the Separate Agreement (as set forth in Appendix 1 hereto), as it is in effect on the date hereof after giving effect to operation of law, and of the other Appendix hereto are incorporated by reference in their entirety herein and form an integral part of this Agreement.

1.2 References in Appendix 1 hereto to ACC National Telecom Corp. or to ACC shall for purposes of this Agreement be deemed to refer to PaeTec.

1.3 References in Appendix 1 hereto to the "Effective Date", the date of effectiveness thereof and like provisions shall for purposes of this Agreement be deemed to refer to the date first written above. Unless terminated earlier in accordance with the terms of Appendix 1 hereto, this Agreement shall continue in effect until the Separate Agreement expires or is otherwise terminated.

1.4 References in Appendix 1 hereto to "800/888" be deleted in their entirety and replaced with the following: "800/888/877".

1.5 The following language shall be deleted from Section 1.1.40 of Appendix 1 hereto: "within three (3) months of the Effective Date which is substantially similar to the template provided by NYNEX to ANTC on or about March 5, 1997". This language shall be replaced by the following: "in accordance with Sections 4 and 12 of this Agreement".

1.6 The second sentence of Section 12.1 of Appendix 1 hereto shall be deleted and replaced in its entirety with the following:

"The Parties shall enter into good faith negotiations with the goal of establishing a Joint Grooming Plan within sixty (60) days of the filing of this Agreement with the Commission."

1.7 Reference to "B.01" in Section 4.3.1 of Appendix 1 hereto shall be deleted and replaced with the following: "P.01".

1.8 Reference to "April 1, 1998" in the second paragraph of Section I of Attachment PA (Pricing Schedule) of Appendix 1 hereto, shall be deleted and replaced with the following: "May 1, 1999".

1.9 Notwithstanding Section 33.7.2.1 of Appendix 1 hereto, at such time as BA makes available the Performance Monitoring Reports set forth in the Memorandum Opinion and Order adopted by the FCC on August 14, 1997 (the "FCC Merger Order") to other Telecommunications Carriers purchasing Interconnection from BA, BA shall provide PaeTec with the Performance Monitoring Reports applicable to PaeTec in accordance with the requirements of said FCC Merger Order.

1.10 All notices, affidavits, exemption-certificates or other communications to PaeTec under Section 41.6 of Appendix 1 hereto shall be sent to the following address:

PaeTec Communications, Inc.  
Attn: Ms. VanDruff  
Manager of Tax and Accounting  
290 Woodcliff Drive  
Fairport, New York 14450  
Facsimile: (716) 385-8994  
Phone: (716) 340-2500

1.11 All notices, affidavits, exemption-certificates or other communications to BA under Section 41.6 of Appendix 1 hereto shall be sent to the following address:

Tax Administration  
Bell Atlantic Corporation  
1095 Avenue of the Americas  
Room 3109  
New York, New York 10036

1.12 Notices to PaeTec under Section 41.9 of Appendix 1 hereto shall be sent to the following address:

PaeTec Communications, Inc.  
Attn: Mr. Ambrosi  
Manager of Regulatory Affairs  
290 Woodcliff Drive  
Fairport, New York 14450  
Facsimile: (716) 340-2563  
Phone: (716) 340-2500

1.13 Notices to BA under Section 41.9 of Appendix 1 hereto shall be sent to the following address:

President - Telecom Industry Services  
Bell Atlantic Corporation  
1095 Avenue of the Americas  
40<sup>th</sup> Floor  
New York, New York 10036  
Facsimile: (212) 597-2585

with a copy to:

Bell Atlantic Network Services, Inc.  
Attn: Mr. Jack H. White,  
Associate General Counsel  
1320 N. Court House Road, 8<sup>th</sup> Floor  
Arlington, Virginia 22201  
Facsimile: (703) 974-0744

with a copy to:

Vice President and General Counsel  
Bell Atlantic - New York  
1095 Avenue of the Americas  
40<sup>th</sup> Floor  
New York, New York  
Facsimile: (212) 597-2560



1.14 Attachment 4.0 set forth at Appendix 2 hereto shall replace and supersede in its entirety Attachment Schedule 4.0 of Appendix 1 hereto.

## **2.0 Clarifications**

2.1 Section 1.1.70, definition of "Telephone Exchange Service Call" or "Telephone Exchange Service Traffic", and Section 7.3 on Reciprocal Compensation arrangements of Appendix 1 hereto, are hereby deleted in their entirety and replaced as follows:

1.1.70 "Telephone Exchange Service Call" or Telephone Exchange Service Traffic" means a call completed between two Telephone Exchange Service Customers of the Parties located in the same LATA, originated on one Party's network and terminated on the other Party's network where such call was not carried by a third party as either a presubscribed call (1+) or a casual dialed (10XXX) or (101XXX) call. Telephone Exchange Service Traffic is transported over Traffic Exchange Trunks and qualifies for Reciprocal Compensation pursuant to the terms of this Agreement. "Telephone Exchange Service Call" or "Telephone Exchange Service Traffic" do not include any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission ("Internet Traffic").

7.3 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service, InterLATA Service or to any IntraLATA calls originated on a third party carrier's network on a 1+ presubscribed basis or a casual dialed (10XXX or 101XXXX) basis or other forms of exchange access, including origination or termination of Internet Traffic. All Switched Exchange Access Service and all Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state Tariffs.

2.2 The entry into, filing and performance by BA of this Agreement does not in any way constitute a waiver by BA of any of the rights and remedies it may have to seek review of any of the provisions of the Separate Agreement, or to petition the Board, other administrative body or court for reconsideration or reversal of any determination made by any of them, or to seek review in any way of any portion of this Agreement in connection with PaeTec's election under Section 252(i) of the Act.

2.3 Notwithstanding any provision of this Agreement, the BA shall have no obligation to perform under this Agreement until such time as PaeTec has obtained a Certificate of Public Convenience and Necessity (CPCN) or such other Commission authorization as may be required by law as a condition for conducting business in the State of New York as a local exchange carrier.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 20th day of November, 1998.

PAETEC COMMUNICATIONS, INC.

BELL ATLANTIC - NEW YORK

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: Jeffrey A. Masoner

Title: \_\_\_\_\_

Title: Vice-President - Interconnection Services  
Policy & Planning

## **EXHIBIT B**

Bell Atlantic Network Services, Inc.  
Telecom Industry Services  
Two Bell Atlantic Plaza  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201  
Voice: 703 974-4611  
Fax: 703 974-0744

Stacy Walsh Pin  
Contracts Manager

November 12, 1998

**VIA MESSENGER**

Mr. Eric Branfman, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Ste. 300  
Washington, D.C. 20007

**RE: Interconnection Agreement between Bell Atlantic -  
New York and PaeTec Communications, Inc.**

Dear Mr. Branfman:

In an Order released on October 30, 1998 in CC Docket 98-79, the FCC ruled that traffic that originates on a carrier's network and then terminates over the Internet via the facilities of an Internet Service Provider ("ISP") comprises a single call that is jurisdictionally interstate, and not local. In light of this development, Bell Atlantic is not in a position to execute any interconnection agreement that does not explicitly state both that Internet traffic is not local, and that Bell Atlantic is not obligated to pay reciprocal compensation on such traffic. Accordingly, Bell Atlantic has revised our proposed agreement to reflect this position.

Please sign the flagged signature pages and return one complete contract and **both** signature pages to my attention at the above address. The documents will then be forwarded to Jeffrey A. Masoner for his signature and we will send back one executed set of signature pages to your attention.

If you have any questions please contact me on (703) 974-4611.

Sincerely,



Stacy Walsh Pin

c: C. Antoniou, Esq.

## **EXHIBIT C**

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7645  
WWW.SWIDLAW.COM

ERIC J. BRANFMAN  
DIRECT DIAL (202) 424-7553  
EJBRANFMAN@SWIDLAW.COM

NEW YORK OFFICE  
919 THIRD AVENUE  
NEW YORK, NY 10022-9998  
(212) 758-9500 FAX (212) 758-9526

September 28, 1998

## **BY FACSIMILE AND OVERNIGHT MAIL**

Debra Renner, Acting Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

**Re: Case 97-C-0271**

Dear Secretary Renner:

On behalf of Choice One Communications Inc. ("Choice One"), I have enclosed 24 copies of this letter for filing in the above referenced proceeding. Please date-stamp and return the extra copy in the self-addressed envelope I have provided. Thank you in advance for your assistance in this matter.

Choice One is not a party to this proceeding, but believes that the following information will assist the Commission in its consideration of this matter. This letter is written in lieu of filing Comments in this proceeding. Choice One is a competitive local exchange carrier ("CLEC") currently in the process of adopting, pursuant to 47 U.S.C. § 252(i), the approved interconnection agreement between Bell Atlantic for the State of New York ("BA-NY") and ACC National Telecom Corp. ("ANTC") dated as of November 11, 1997. On September 4, 1998, Choice One informed BA-NY that it desired to opt into the ANTC/BA-NY Agreement pursuant to § 252(i). In response, on September 14, 1998, Stephen Hughes of BA-NY sent counsel for Choice One a draft agreement adopting and incorporating the ANTC/BA-NY agreement by reference ("Adoption Agreement"). Although the ANTC/BA-NY interconnection agreement does not exclude Internet-bound traffic from the definition of local traffic for purposes of reciprocal compensation, the Adoption Agreement furnished by BA-NY contained the following provision:

### **2.0 Clarifications**

...

- 2.3 The Reciprocal Compensation provisions set forth in this Agreement do not apply to Internet-bound traffic because such traffic is not local traffic.**

While Choice One has objected to this purported "clarification" which would completely change the agreement, BA-NY has not as of this writing modified its position. BA-NY's purported "clarification" stands in stark contrast to the March 19, 1998 Order of this Commission declaring

Debra Renner, Acting Secretary  
September 28, 1998  
Page 2

such traffic to be local in nature. Moreover, this language contradicts the appearance of compliance with the Commission's March 19th Order presented in the Joint Affidavit filed by BA-NY in this proceeding.<sup>1</sup> In Paragraph 76 of the Joint Affidavit, BA-NY represented that "[n]otwithstanding BA-NY's continued view that traffic to internet service providers should not be treated as local traffic eligible for reciprocal compensation, BA-NY currently pays reciprocal compensation to 14 wireline CLECs and 54 wireless carriers at rates set by the Commission for the termination of this and other traffic under the terms of its interconnection agreements and/or BA-NY's NY PSC Tariff No. 914." Certainly BA-NY may not choose to honor, for some carriers, the Commission's ruling that such traffic is local traffic eligible for reciprocal compensation but not for others, merely because it does not agree with the ruling. Unfortunately, it appears that this is precisely what BA-NY is doing. BA-NY's tactics are an anti-competitive attempt to delay the exercise by CLECs of their Section 252(i) rights, to evade the Commission's March 19th Order, and to generally retard competition. Such conduct should weigh heavily in the Commission's consideration as to whether BA-NY has shown that the public interest will be served by BA-NY being authorized to offer in-region interLATA service.

Very truly yours,



Eric J. Branfman

Counsel for Choice One Communications Inc.

cc: Andrew Kline, Esq. (by fax)  
Honorable Eleanor Stein (by fax)  
Honorable Jacqueline Brilling (by fax)  
Honorable Judith Lee (by fax)  
Mae Squier-Dow (by fax)  
Stephen Hughes (by fax)  
Eric N. Einhorn, Esq.  
Attached Service List

253107.1

---

<sup>1</sup> *Joint Affidavit of Julie A. Canny, Karen Maguire, Patrick J. Stevens and Craig Soloff On Behalf Of Bell Atlantic - New York*, filed September 11, 1998, at ¶¶ 75-77.

## CERTIFICATE OF SERVICE

I, Eric N. Einhorn, hereby certify that on November 23, 1998, a true copy of Comments of PaeTec Communications, Inc. was served on the following people via hand delivery, as indicated by an asterisk, or by Federal Express, as indicated.

Magalie Roman Salas\* (orig. and 12)  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

International Transcription Service, Inc.\*  
Attn: Duplicating Contractor  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Jeanine Poltronieri\*  
Wireless Telecommunications Bureau  
2025 M Street, N.W.  
Room 5002  
Washington, D.C. 20554

Radhika Karmarke\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Janice Myles\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Chief\* (2 copies)  
International Bureau  
2000 M Street, N.W.  
Room 800  
Washington, D.C. 20554

Michael Kende\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

To-Quyen Truong\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

Lisa Choi\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

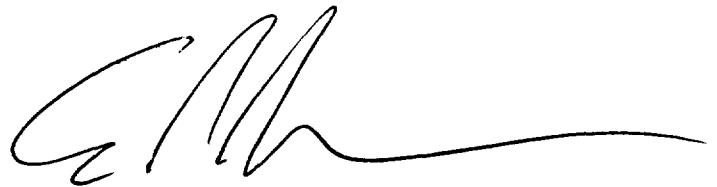
Bill Dever\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554



Cecilia Stephens (w/diskette)\*  
Policy Programming Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

William P. Barr (Federal Express)  
Executive Vice President - Government and  
Regulatory Advocacy and General Counsel  
GTE Corporation  
One Stamford Forum  
Stamford, CT 06904

James R. Young (Federal Express)  
Executive Vice President - General Counsel  
Bell Atlantic Corporation  
1095 Avenue of the Americas  
New York, NY 10036

A handwritten signature in black ink, appearing to read 'E. N. Einhorn', with a long horizontal flourish extending to the right.

---

Eric N. Einhorn